To: Laidlaw, Tina[Laidlaw.Tina@epa.gov]
From: Christine Brick
Sent: Tue 6/18/2013 5:05:25 PM
Subject: FW: Nodeg discussion outline
Meeting Summary

From: Thompson, Mark (Golden Sunlight) [mailto:msthompson@barrick.com]
Sent: Tuesday, June 11, 2013 6:35 AM
To: Suplee, Mike
Cc: Douglas Parker; Mark Lambrecht; Christine Brick; cpozega@greatwesteng.com; Mathieus, George; Urban, Eric (EUrban@mt.gov)
Subject: Nodeg discussion outline

Mike,

We greatly appreciate your efforts to further resolution of this complicated issue and we are pleased that we can be a part of this collaborative effort. We look forward to discussing the items below in more detail on the 24th.

As I understand your outline, there are basically three alternatives that are being proposed for discussion and a "new" issue has been brought forward. The three alternatives are:

1. BMPs and/or alternatives in discharge procedures/locations/methods;

2. Authorization to degrade;

3. Stream reclassification;

The additional issue brought forward is with regard to non-degradation derived effluent limits not being seasonal (unlike the numeric criteria). The discussion point regarding defining, in rule, non-significance at technology-based levels (i.e. numeric equivalence of the variances) would appear to be sound. However, consideration should be given to the concentrations of nutrients in the "off-season" that could impact existing uses. Perhaps technology-based levels would be

overly protective of existing uses at various times of the year.

Discussing the three alternatives listed above, not necessarily in order:

Authorization to degrade – As I understand this alternative, through an application process to the department, a new or expanded discharger can present information that could allow an effluent limit up to some fraction (possibly including 100%) of the numeric criteria. Perhaps in the future this could be very important, but given the constraints of current technology, unless the authorization to degrade is over 1000% of the numeric criteria there is no real relief provided. Currently, there simply is no available technology that can treat to the levels being discussed under the authorization to degrade alternative.

Stream Reclassification – As I understand this alternative, a temporary stream classification could be established that would eliminate certain uses which could result in effluent limits less restrictive than would otherwise be derived under the non-deg standard for all uses. However, effluent levels would have to be protective of fish and only certain streams could be considered for the re-class. Further, each individual reclassification would have to be approved through a public process before the Board of Environmental Review. My understanding is that to be protective of fish, effluent limits would be established below the technologic treatability for total nitrogen. While further discussion is warranted, the issues regarding the ability to treat to effluent limits, BER approval for individual reclassifications and the frequency of applicability based on stream characteristics are significant hurdles to overcome.

BMPs etc. – For the most part, rules and regulation governing the issuance of discharge permits authorize restrictions on the quality and certain other parameters at the end-of-pipe. In the e-mail that I sent on May 16th (attached), we offered to have BMPs and consideration to alternate discharge methods established in rule assuming that substantial relief (i.e. up to the numeric equivalence of the variances) could be provided. We are not seeing the potential for substantial relief in the discussion outline that would compensate for regulatory intervention in operational decisions. In fact we do not see that the discussion outline provides for a feasible means to discharge at all, as the effluent limits derived from stream reclassification or authorization to degrade could likely be more restrictive than treatability using available and proven technology.

Fundamentally, the application of the non-degradation standard to nutrients amounts to a regulatory moratorium on the development of new businesses or the expansion of existing businesses that seek to discharge until such time as technology equilibrates with policy. The

2011 legislature nearly unanimously sought to relieve impacts to Montana's economy and communities brought by the establishment of policy unachievable through today's technology. The non-deg standard was unintentionally overlooked, but the intent is clear. It is my belief and understanding that the legislature is looking to this work group to develop means such that all dischargers can be guaranteed effluent limits for nutrients that are at a minimum technologically achievable. If there is to be, in effect, a ban on all new or expanded discharges in certain types of receiving waters, then that intent would need to be clearly voiced by the legislature or voters, not by this working group or the EPA.

Thanks

Mark

From: Suplee, Mike [mailto:msuplee@mt.gov]
Sent: Wednesday, June 05, 2013 6:43 PM
To: DParker@hydrometrics.com; MarkLambrecht@mt.net; Thompson, Mark (Golden Sunlight); chris@clarkfork.org; cpozega@greatwesteng.com
Cc: Urban, Eric; Mathieus, George
Subject: RE: Nodeg discussion outline

Hello Everyone;

I believe our basic agenda outline for the non-degradation discussion is largely acceptable (please let me know otherwise) and I would like to set up our in-person meeting. It will be open to all interested parties in the Nutrient Work Group but I am working with this core group to set the date that works best. Of these dates:

June 24th (anytime)

June 27th (anytime)

June 28th (morning better)

Do you have a preference. Please let me know and I will start to get a room scheduled and then we'll provide the invite to the larger group.

Thanks,

Michael Suplee

Water Quality Standards

MT Dept. of Environmental Quality

To: Mathieus, George[gemathieus@mt.gov]
Cc: Douglas Parker[DParker@hydrometrics.com]; Tom Hopgood[thopgood@montanamining.org]; Tammy Johnson[tammyjohnson@environomicsusa.com]; mwolfe@stillwatermining.com[mwolfe@stillwatermining.com]; EUrban@mt.gov[EUrban@mt.gov]; Suplee, Mike[msuplee@mt.gov]
From: Thompson, Mark (Golden Sunlight)
Sent: Thur 5/16/2013 1:40:10 PM
Subject: Meeting Summary

George,

I think we had a good meeting yesterday and I would like to thank everyone for their time. I thought I would drop this e-mail to summarize my understanding of what came out of the meeting.

Mike was going to take a stab at developing some criteria for receiving waters that could qualify them for a temporary reclassification. You and Eric were going to check with the DEQ legal folks to ensure that Temporary Reclassification of a stream did not have to go through full rule making and that it could be possible to "automatically" temporarily reclass a stream if it were to fall within the parameters that Mike is developing. I recall that there was a discussion that perhaps a rough outline of this approach could be distributed, informally, by Monday. Mike was also going to apply this approach to the Highlands Mine and Montanore scenario and see how it would work.

Eric made a couple of points that I think warrant some further discussion. He mentioned that EPA was concerned about including an "alternatives analysis" in the rule itself. As I don't have to deal with EPA like you do, what EPA thinks isn't a huge concern to me, but I also know that it is not difficult to baffle EPA with pragmatism and ultimately EPA has the final approval authority. However, I can see that there would be some pros and cons for having this in guidance instead of rule. It would likely boil down to how it would be implemented by the permit writing group.

Eric also mentioned that gaining authorization to degrade may not be difficult for nutrients. Could this be some kind of "automatic" relief built into the rule based on pre-established criteria? As I understand it, authorization to degrade throws the effluent limits back to the numeric criteria. I'm going to make a big reach here; if the effluent limits are brought back to the numeric criteria, would the 367 variance then apply? I believe that this would be the same as saying, once the authorization to degrade is granted, non-deg rules no longer apply. A long shot, but worth throwing out.

I continue to believe that temporary standards may have potential if some of these other ideas don't pan out.

I kind of beat around the bush on this topic, but several of the legislators involved in the development of SB 367 have expressed concern that "we" (industry and regulators) missed this non-deg scenario for nutrients and that new dischargers (i.e. new businesses and industries) will be thrown under the bus. They firmly believe that all dischargers should be granted the variances or the numeric equivalence of the variances so that Montana can stay competitive in the marketplace. I fear that if we can't develop a method for relief, EQC is going to be tough on us.

I hope to see you on Monday.

Mark